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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 BARBARA LYNN CHAVEZ,

CV F 05-00490 REC DLB HC

10 Petitioner,

ORDER DENYING PETITIONER'S REQUEST
FOR EVIDENTIARY HEARING

11 v.

[Doc. 2]

12 GLORIA HENRY, WARDEN,

13 Respondent.
14 _____/

15 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254.

17 Petitioner filed the instant petition for writ of habeas corpus on April 13, 2005, along with
18 a request for an evidentiary hearing. Petitioner requests the Court to conduct an evidentiary
19 hearing "to make determinations of factual issues addressed in the meritorious claims" in the
20 petition for writ of habeas corpus.

21 Rule 8(a) provides that where a petition is not dismissed at a previous stage in the
22 proceeding, the judge, after the answer and transcripts and record of the state court proceedings
23 are filed, shall, *upon review* of those proceedings, determine whether an evidentiary hearing is
24 required. The purpose of an evidentiary hearing is to resolve the merits of a factual dispute. An
25 evidentiary hearing on a claim is required where it is clear from the petition that: (1) the
26 allegations, if established, would entitle the petitioner to relief; and (2) the state court trier of
27 fact has not reliably found the relevant facts. See, Hendricks v. Vasquez, 974 F.2d 1099, 1103
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(9th Cir.1992). As the function of an evidentiary hearing is to try issues of fact, Townsend v. Sain 372 U.S. 293, 309 (1963)(*overruled in part by* Keeney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715 (1993)), such a hearing is unnecessary when only issues of law are raised. Id.

In the instant case, Petitioner's only justification is to make determination of factual issues addressed in the petition. As noted above, the purpose of an evidentiary hearing is to resolve the merits of a *factual* dispute. Until the Court conducts a thorough review of the merits of Petitioner's claims, it cannot be determined that a factual dispute necessitating an evidentiary hearing is present. Following a thorough review of the petition's merits, the Court will sua sponte issue an order for an evidentiary hearing should it find one necessary.

Accordingly, the request for an evidentiary hearing is DENIED.

IT IS SO ORDERED.

Dated: May 19, 2005
3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE